IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10294 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AVTARSING MALEKSING BAGGA @ BITTU @ VIJAYKUMAR MANILAL
Versus
COMMISSIONER OF POLICE

Appearance:
MR ANIL S DAVE for Petitioner
MR HH PATEL AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 22/01/2001

ORAL JUDGEMENT

#. Request has been made by the learned counsel for the respondent for grant of time to file reply to the Special Civil Application by respondents. This request is declined. This matter is squarely covered by the decision of this court in the Special Civil Application No.10611 of 2000 decided on 23.1.2001 on both the points of adjournment and costs.

#. The petitioner was detained as a bootlegger under the order of the Commissioner of Police, Ahmedabad dated 5.9.2000 and he is presently at Junagadh District jail, Junagadh.

#. Challenging this order manifold contentions are raised by the learned counsel for the petitioner but as this petition deserves to be allowed only on one ground it is not necessary to refer all those contentions, discuss and decide.

#. One of the contentions raised in para 24 of the petition is that documents at page No.10, 25 and 71 of the compilation given to the petitioner along with grounds of detention are not legible. I have gone through these documents and I find that page 10 is legible. However, the four lines of the document at page No.25 are not legible. So far as document at page No.71 is concerned there also few of lines are not legible. I have given these pages to the learned AGP, he fairly conceded that page No.25 is not legible and as a result of the aforesaid discussion, this petition succeeds and the same is allowed.

The order of detention of the petitioner dated 5.9.2000 is quashed and set aside. The petitioner Avtarsing Maleksing Bagga, the detenu, at present in Junagadh District Jail, Junagadh be set at liberty forthwith, if he is not required in any other case. Rule is made absolute. The respondent State of Gujarat is directed to pay Rs.15,000/= as the costs of this petition to the petitioner.

#. The learned counsel for the respondent strongly opposed awarding of the cost of this litigation to the petitioner by the court. Firstly it is the discretion of the court to award the costs. So, there is a little scope for raising such objection by the learned counsel for the respondent. Otherwise also I consider it to be a fit case to award the costs. The learned counsel for the petitioner made a statement on being put by the court that he has charged Rs.15,000/= as a fees from the petitioner to provide him his professional services in this case and this amount has been paid by the petitioner to him. It is the question of the personal liberty and the petitioner is free to engage an advocate of his choice. Nobody can compel the petitioner nor any law which required that he has to engage an advocate who charge lesser fees. The advocate is a professional and if any body approach to him to provide his professional

services he can charge his own fees. This may not be the only money which has been spent by the petitioner but in addition to this he would have spent money for typing charges, court fees and other misc. expenses for filing of the petition. But the counsel for the petitioner has not produced any bill of expenses under these heads and as such that amount cannot be awarded to the petitioner.

#. The State of Gujarat an impersonal machinery is not at fault in the matter. Its only fault is that it has no control over its officers or it has not taken its officers to the task for their negligence, recklessness, carelessness and unmindful of the duties which they owe to the people. Because of this negligence, recklessness, carelessness and unmindful of the duty of the concerned officer the reply to the Special Civil Application has not been filed. Whatever the amount comes from the exchequer it is a peoples' money. This money has to be paid to the petitioner by the State of Gujarat not for its own fault but for the negligence, carelessness, reckless and unmindful of duty of its officer concerned in this matter. The State of Gujarat through the Chief Secretary is directed to hold an inquiry in the matter and whosoever is found responsible for not filing the reply in the matter in the inquiry this amount of the cost is to be recovered from him. This inquiry is to be completed within a period of six months from the date of the receipt of the writ of this order. Compliance of the order be reported to this court by the Chief Secretary. Unless it is scrupulously done and the officers who are found negligent, careless and unmindful in discharging of their duties as a result of which the State of Gujarat has to suffer monetary loss and that amount is not recovered from those officers its House may not be corrected.

(S.K.Keshote, J.)

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